

LIBRARY
SUPREME COURT, U.S.

Office - Supreme Court, U.S.

FILED

JAN 2 1957

JOHN T. FEY, Clerk

IN THE
Supreme Court of the United States

OCTOBER TERM, 1956

No. ~~500~~ 51

UNITED STATES OF AMERICA;

Appellant,

v.

THE PROCTER & GAMBLE COMPANY, COLGATE-
PALMOLIVE COMPANY, LEVER BROTHERS COM-
PANY and THE ASSOCIATION OF AMERICAN SOAP
AND GLYCERINE PRODUCERS, INC.,

Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY.

**JOINT APPENDIX TO APPELLEES' MOTIONS
TO DISMISS OR AFFIRM.**

January 2, 1957.

INDEX.

	PAGE
Motion for disclosure of grand jury transcripts filed by The Procter & Gamble Company, dated September 24, 1954. [Tab No. 32]*	1
Motion for disclosure of grand jury transcripts filed by Colgate-Palmolive Company, dated November 28, 1955. [Tab No. 86]	5
Motion for disclosure of grand jury transcripts filed by Lever Brothers Company, dated November 28, 1955. [Tab No. 87]	6
Motion for disclosure of grand jury transcripts filed by The Association of American Soap and Glycerine Producers, Inc., dated November 25, 1955. [Tab No. 84]	8
Transcript of hearing before the Honorable Alfred E. Modarelli, U. S. D. J. on July 23, 1956. [Tab No. 118]	11
Order for disclosure of grand jury transcripts to The Procter & Gamble Company, dated July 23, 1956. [Tab No. 104]	16
Order for disclosure of grand jury transcripts to Colgate-Palmolive Company, dated July 23, 1956. [Tab No. 105]	18
Order for disclosure of grand jury transcripts to Lever Brothers Company, dated July 23, 1956. [Tab No. 107]	20
Order for disclosure of grand jury transcripts to The Association of American Soap and Glycerine Producers, Inc., dated July 23, 1956. [Tab No. 106]	22

* References are to the tab numbers under which original documents appear in the record as filed with this Court.

Motion to amend or stay orders for disclosure of grand jury transcripts filed by the United States, dated August 15, 1956. [Tab No. 109].....	24
Proposed form of order amending orders for disclosure of grand jury transcripts attached to motion to amend or stay. [Tab No. 109].....	25
Affidavit in support of motion to amend or stay sworn to by Herbert Brownell, Jr. August 14, 1956. [Tab No. 109].....	27
Brief in support of motion to amend or stay. [Tab No. 109]	29
Answer to motion to amend or stay filed by The Procter & Gamble Company, dated August 21, 1956. [Tab No. 111].....	32
Transcript of hearing before the Honorable Alfred E. Modarelli, U. S. D. J. on August 21, 1956. [Tab No. 119]	33
Letter of the Honorable Alfred E. Modarelli, U. S. D. J. to counsel, dated September 6, 1956. [Tab No. 128]	40
Letter to the Honorable Alfred E. Modarelli, U. S. D. J. from Victor R. Hansen, Assistant Attorney General, Antitrust Division, dated September 7, 1956. [Tab No. 129].....	42

**Motion for disclosure of grand jury transcripts filed
by The Procter & Gamble Company.**

IN THE
UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

UNITED STATES OF AMERICA,
Plaintiff,
against

The PROCTER & GAMBLE COMPANY,
COLGATE-PALMOLIVE-PET COMPANY,
LEVER BROTHERS COMPANY, and THE
ASSOCIATION OF AMERICAN SOAP AND
GLYCERINE PRODUCERS, INC.,
Defendants.

Civil Action
No. 1196-52.

**MOTION FOR ORDER DIRECTING DISCLOSURE OF
GRAND JURY TRANSCRIPTS.**

The defendant, The Procter & Gamble Company (hereinafter called "Procter") respectfully moves the Court, pursuant to the discovery provisions of the Federal Rules of Civil Procedure and in accordance with the powers of this Court to act in the interest of justice with respect to litigation pending before it, for an order granting leave to Procter and its counsel to inspect and copy, commencing within ten (10) days after the entry of the order herein, the following documents or papers which are either in the possession or control of plaintiff and its counsel or are otherwise within the control of this Court:

The transcripts of the testimony of all witnesses taken before the Grand Jury of the United States District Court

*Motion for disclosure of grand jury transcripts
filed by The Procter & Gamble Company.*

for the District of New Jersey sitting in Newark from May 1951 to November 1952 in connection with an investigation of possible antitrust law violations in the soap and synthetic detergent industry. (See proceeding numbered Cr. 174-51, 175-51, 176-51, 177-51.)

In support of this motion Procter shows to the Court, *inter alia*:

(a) The Grand Jury transcripts record testimony taken in connection with an investigation of whether there were violations of the antitrust laws by the movant and other members of the soap and synthetic detergent industry.

(b) The said transcripts plus the documents obtained by Grand Jury subpoena have been available to and used by the plaintiff in preparation for the instant civil action.

(c) Under orders issued in this case on May 27, 1953, and January 14, 1954, plaintiff, over protest of Procter, has been permitted to retain and use in this civil action documents and information produced in the Grand Jury proceeding which were obtained without the notice provided and the method prescribed for all parties by the Civil Rules and the Statutes.

(d) On the other hand, Procter has not had access to the Grand Jury transcripts, or to other information produced before the Grand Jury.

(e) The said Grand Jury was discharged on November 25, 1952, without returning any indictments against Procter or the other defendants and there is no pending criminal proceeding involving the evidence produced before the Grand Jury. The names of most, if not all of those who appeared and testified before the said Grand Jury in connection with the investigation of the soap industry have

been k
nesses
mony.
or the
the sec

(f)
scripts
of its
alleged
in this
pursua
this a
Procter

(g)
becom
transc
would
in this
of the
proces
theref
the U

At
positi
to mo
cedur
in the
duced

*Motion for disclosure of grand jury transcripts
filed by The Procter & Gamble Company.*

is known for many months and it is believed that witnesses would have no objection to disclosure of their testimony. Procter does not seek to discover the deliberations or the votes of any Juror. No need exists for preserving secrecy of the said Grand Jury transcripts.

(f). The information contained in the Grand Jury transcripts is necessary to Procter for an adequate preparation of its defenses to this action, and is relevant to the matters alleged in the complaint. The relevancy of such transcripts in this civil action is supported by the fact that plaintiff, pursuant to Rule 34, sought and obtained from Procter in this action the same documents which were produced by Procter before the said Grand Jury.

(g) Matters pertinent to Procter's defenses will never become known to Procter unless access to the Grand Jury transcripts is granted by this Court. Denial of such access would be unjust, discriminatory and prejudicial to Procter in this case and would be violative of the spirit and meaning of the Statutes and Rules and would deprive Procter of due process and equal protection of the laws and would be, therefore, violative of Amendment V of the Constitution of the United States.

At an appropriate time, when Procter believes it is in a position to frame requests of proper scope, Procter intends to move under Rule 34 of the Federal Rules of Civil Procedure for leave to inspect and copy documents and papers, in the possession or control of plaintiff, which were produced pursuant to the Grand Jury subpoenas as well as

*Motion for disclosure of grand jury transcripts
filed by The Procter & Gamble Company.*

other documents and papers in the possession or control of plaintiff.

Dated: September 24, 1954.

TONER, CROWLEY, WOELPER & VANDERBILT

/s/ JOHN A. ACKERMAN

By per KENNETH C. ROYALL
810 South Broad Street
Newark, New Jersey

/s/ RICHARD W. BARRETT

per KENNETH C. ROYALL
Richard W. Barrett

DINSMORE, SHOHL, SAWYER & DINSMORE
1218 Union Central Building
Cincinnati 2, Ohio

/s/ KENNETH C. ROYALL

Kenneth C. Royall

DWIGHT, ROYALL, HARRIS, KOEGEL & CASKEY
100 Broadway
New York 5, New York

Attorneys for Defendant, The Procter &
Gamble Company

[Tab No. 32]

**Motion for disclosure of grand jury transcripts filed
by Colgate-Palmolive Company.**

Sirs:

PLEASE TAKE NOTICE that the undersigned will move this Court in the United States Court House, Newark, New Jersey, on the 12th day of December, 1955 at 10 o'clock in the forenoon or as soon thereafter as counsel can be heard, upon all the proceedings heretofore had herein, for an order pursuant to Rule 6(e) of the Federal Rules of Criminal Procedure directing disclosure to the defendant Colgate-Palmolive Company of the transcripts of the testimony of all witnesses who testified before the grand jury of this Court sitting in Newark, New Jersey, from May 1951 through November 25, 1952 in connection with an investigation of possible violations of the antitrust laws of the United States in the soap and synthetic detergent industries, and permitting the said defendant to inspect and copy the transcripts of such testimony, and for such other relief as may to the Court seem just and proper.

Dated: November 28, 1955.

Yours, etc.

O'MARA, SCHUMANN, DAVIS & LYNCH

By /s/ EDWARD J. O'MARA
A member of said firm

No. 1 Exchange Place
Jersey City 2, New Jersey

CAHILL, GORDON, REINDEL & OHL
63 Wall Street
New York 5, New York
Attorneys for Defendant
Colgate-Palmolive Company

[Tab No. 86]

**Motion for disclosure of grand jury transcripts filed
by Lever Brothers Company.**

The Defendant Lever Brothers Company respectfully moves the Court for an order

A. Requiring the plaintiff to disclose to said defendant the names of the witnesses appearing before the grand jury of the United States District Court for the District of New Jersey sitting in Newark from May 1951 to November 1952, investigating possible antitrust law violations in the soap and synthetic detergent industry (proceeding numbered Criminal 174-51, 175-51, 176-51, 177-51), and

B. Requiring the plaintiff to permit defendant to inspect and copy the grand jury transcript of the testimony of such witnesses or, in the alternative, of such witnesses appearing before such grand jury as consent to the disclosure of their testimony.

The grounds for this motion are that (1) no privilege of secrecy attaches to the testimony of a witness before the grand jury; (2) Lever Brothers Company is urgently in need of access to such testimony in order to discover in this civil proceeding the evidentiary basis, if any, for the charges in the complaint and to prepare its defense to such charges; and (3) no practicable alternative to such discovery exists under the Federal Rules of Civil Procedure because to attempt to obtain such discovery through depositions of such witnesses would necessarily involve substantial cost and severe inconvenience to all parties, would gravely retard the expeditious preparation of this cause

*Motion for disclosure of grand jury transcripts filed by
Lever Brothers Company.*

for trial, and would not in any event produce accurate information because of the lapse of time and other factors.

Respectfully submitted,

BAILEY, SCHENCK & BENNETT

By /s/ ALEXANDER T. SCHENCK
744 Broad Street
Newark, New Jersey

ARNOLD, FORTAS & PORTER

By /s/ ABE FORTAS
1229 19th Street, N. W.
Washington, D. C.

Attorneys for Defendant.

Dated: November 28, 1955

[Tab No. 87]

**Motion for disclosure of grand jury transcripts filed
by The Association of American Soap and
Glycerine Producers, Inc.**

The defendant, The Association of American Soap and Glycerine Producers, Inc. (hereinafter called "the Association"), respectfully moves the Court, pursuant to the discovery provisions of the Federal Rules of Civil Procedure and in accordance with the power of this Court to act in the interest of justice with respect to litigation pending before it, for an order granting leave to the Association and its counsel to inspect and copy the following documents or papers which the Association believes to be either in the possession or control of plaintiff and its counsel or are otherwise within the control of this Court:

The transcripts of the testimony of all witnesses taken before the Grand Jury of the United States District Court for the District of New Jersey, sitting in Newark from May 1951 to November 1952 in an investigation of possible anti-trust law violations in the soap and synthetic detergent industry.

If the Court should be of the opinion that the entire transcript of testimony before the Grand Jury, together with the exhibits introduced in evidence, should not be made available to the defendant Association, then the Association prays for an order permitting it and counsel to inspect the testimony and pertinent exhibits before the Grand Jury of such witnesses as will give their consent to the defendant Association's seeing and examining their testimony.

In support of this motion, the Association shows to the Court:

(a) The transcripts of testimony before the Grand Jury as above set forth contained testimony taken in connection with an investigation to determine whether there were violations of the anti-trust laws by the Association and other members of the soap and synthetic detergent industry.

(b) The Association asserts, on information and belief, that said transcripts and exhibits obtained by Grand Jury

*Motion for disclosure of grand jury transcripts filed by
The Association of American Soap and
Glycerine Producers, Inc.*

subpoena have been available to and used by the plaintiff in preparation for the instant civil action.

(c) The plaintiff has been permitted to retain and use in the preparation of the instant case documents and information of the Association produced in the Grand Jury proceedings. On information and belief, the Association asserts that the plaintiff has also been permitted to retain and use in the instant case all other documents and information produced in the Grand Jury proceedings.

(d) On the other hand, the Association has not had access to the Grand Jury transcripts or to other information produced before the Grand Jury.

(e) The said Grand Jury was discharged on November 25, 1952, without returning an indictment against the Association or the other defendants in this action and there is no pending criminal proceeding involving the evidence produced before the Grand Jury. The Association believes that the names of most, if not all, of the witnesses who appeared and testified before the said Grand Jury have been known for some time. It is believed that many, if not all, of the witnesses would have no objection to disclosure of their testimony.

(f) It is of the utmost importance to the Association that the information contained in the Grand Jury transcript be made available to it for the preparation of its defense in the instant case and that the testimony of many, if not all, of the witnesses before the Grand Jury as well as the documents introduced in evidence are relevant to the matters alleged in the complaint in the instant case. The relevancy of such transcripts in the instant case is supported by the fact that the plaintiff sought and obtained from the Association in this case the same records of the Association which were produced by it before the said Grand Jury.

*Motion for disclosure of grand jury transcripts filed by
The Association of American Soap and
Glycerine Producers, Inc.*

(g) The Association believes that many matters pertinent to its defense in the instant case will never become known to it unless access to the Grand Jury transcripts is granted by this Court. Under the circumstances, as related herein, denial of such access would be unjust, discriminatory and prejudicial to the Association in the instant case and would be violative of the spirit of the applicable statutes and rules and would deprive the Association of due process and equal protection of the laws and would be, therefore, violative of Amendment V of the Constitution of the United States.

Dated November 25, 1955.

McCARTER, ENGLISH & STUDER,
Attorneys of Defendant The Association of
American Soap and Glycerine Producers, Inc.,
11 Commerce Street,
Newark 2, New Jersey.

By /s/ AUGUSTUS C. STUDER, JR.,
A Member of the Firm.

Of Counsel

DAVIES, RICHBERG, TYDINGS, BEEBE & LANDA,
1000 Vermont Avenue, N. W.,
Washington 5, D. C.

By /s/ JAMES T. WELCH,
A Member of the Firm.

[Tab No. 84]

**Transcript of hearing before the Honorable Alfred E.
Modarelli, U. S. D. J. on July 23, 1956.**

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY.**

UNITED STATES OF AMERICA,

vs.

THE PROCTER & GAMBLE COMPANY,
et al.

Civil Action
No. 1196-52

Newark, New Jersey,
July 23, 1956.

Before The Honorable ALFRED E. MODARELLI, U. S. D. J.

APPEARANCES:

HERMAN SCOTT,

U. S. Attorney, District of New Jersey,

By: GEORGE J. ROSSI,

Assistant U. S. Attorney;

JOSEPH E. McDOWELL, and

RAYMOND M. CARLSON,

Attorneys, Department of Justice,
Attorneys for the Plaintiff.

TONER, CROWLEY, WOELPER & VANDERBILT,

Attorneys for defendant Procter & Gamble
Company,

By: MARSHALL CROWLEY;

DWIGHT, ROYALL, HARRIS, KOEGEL & CASKEY,
of Counsel,

By: KENNETH C. ROYALL and
H. ALLEN LOCHNER;

DINSMORE, SHOHL, SAWYER & DINSMORE,
of Counsel,

By: RICHARD W. BARRETT.

*Transcript of hearing before the Honorable Alfred E.
Modarelli, U. S. D. J. on July 23, 1956.*

O'MARA, SCHUMANN, DAVIS & LYNCH,
Attorneys for defendant Colgate-Palmolive-Peet
Company;

CAHILL, GORDON, REINDEL & OHL,
of Counsel,

By: MATHIAS F. CORREA, and
JAMES HENRY.

(2) BAILEY, SCHENCK & BENNETT,
Attorneys for defendant Lever Brothers Company,

By: ALEXANDER T. SCHENCK;

ARNOLD, FORTAS & PORTER,
of Counsel,

By: WILLIAM L. MCGOVERN.

MCCARTER, ENGLISH & STUDER,
Attorneys for the Association,

By: AUGUSTUS C. STUDER, JR.;

DAVIES, RICHBERG, TYDINGS, BEEBE & LANDA,
of Counsel,

By: ADRIEN F. BUSICK.

Mr. Correa: If your Honor please, we have an order on the Colgate discovery motion which your Honor decided and then heard on reargument, and has subsequently decided on reargument.

The order is in form agreed to by the Government and, naturally, by ourselves. And we respectfully submit that.

(Document handed to the Court.)

Transcript of hearing before the Honorable Alfred E. Modarelli, U. S. D. J. on July 23, 1956.

The Court: Do you mind if I just take a look at this?

Mr. McGovern: Your Honor, I think that they are all substantially the same in form.

Mr. Fortas, of our firm, is out of the country and has been since the date of your Honor's decision. I have one, in similar form, consented to by the (3) Government, on behalf of Lever Brothers Company.

(Document handed to the Court.)

Mr. Royall: Your Honor, we have a form, also submitted to the Government, and approved as to form by the Government, and signed by counsel for all parties.

(Document handed to the Court.)

Mr. Busick: On behalf of the Association, your Honor, we present an order, the form of which has been approved by the Department.

(Document handed to the Court.)

The Court: Are there any more to be submitted?

Mr. Correa: I think that is the lot, if your Honor please.

The Court: Mr. McDowell, would you like to be heard?

Mr. McDowell: May it please the Court, at the same time that the Attorney General instructed me to sign the consent of the Government to the form of this order, he also instructed me to ask that the orders be presented in open court so that I might state the position of the Government with respect to this order and the subject.

The Court: You may do so.

Mr. McDowell: I am instructed, your Honor, by (4) the Attorney General to inform the Court that the Government must respectfully decline to produce the transcripts called for by the orders which have been tendered.

The Court: You heard what Mr. McDowell said?

*Transcript of hearing before the Honorable Alfred E.
Modarelli, U. S. D. J. on July 23, 1956.*

Mr. Correa: Yes, if your Honor please, I heard what Mr. McDowell has said. Now, the order in the form submitted to your Honor provides that the Government shall make production within thirty days from the entry of the order. I take it that that means, as a practical matter, that we shall have to wait till the expiration of that time to find out whether the Government adheres to the position which has been enunciated here this morning or not. If they do adhere to that position then, I take it, we shall have to take such further steps under the rules as we may be advised.

Mr. Royall: That is our position, also, your Honor.

Mr. McGovern: And Lever Brothers adheres to that position, also, your Honor, plus the fact, as I stated, that Mr. Fortas is out of the country and we have had no opportunity to consult about the position the Government has taken.

Mr. Busick: I take the same position, your (5) Honor.

The Court: Now, the provisions of all the orders are substantially the same.

Mr. Correa: They are identical in form.

Mr. Royall: Yes.

The Court: Identical in form. All provide for thirty days.

Mr. Royall: Yes, sir.

Mr. Correa: Yes, your Honor.

The Court: I am not surprised that the Attorney General feels that way about it. I don't suppose your adversaries are, either.

Mr. McDowell: May I say, your Honor, with respect to the thirty-day matter, we agreed to the inclusion of the provision for thirty days at the request of the defendants, but that it makes no difference to the position of the Government. I was instructed to state that the Government will respectfully decline to produce them.

*Transcript of hearing before the Honorable Alfred E.
Modarelli, U. S. D. J. on July 23, 1956.*

The Court: Obviously, I welcome any test you wish to make of this decision, Mr. McDowell, you and the Attorney General.

You wish to file them today, gentlemen?

Mr. Correa: If your Honor please, sir.

The Court: Nothing further to be done now?

(6) Mr. Royall: No, sir.

The Court: We will wait for thirty days, is that right?

Mr. Correa: Yes, if your Honor please.

The Court: At which time you shall take such action as you deem necessary under the circumstances.

Mr. Correa: That is correct, your Honor.

[Tab No. 118]

**Order for disclosure of grand jury transcripts
to The Procter & Gamble Company.**

The defendant, The Procter & Gamble Company (hereinafter called "Procter"), having filed a motion herein on September 24, 1954, for an order granting leave to inspect and copy transcripts of the testimony of all witnesses before the Grand Jury of the United States District Court for the District of New Jersey, sitting in Newark, New Jersey, from May 1951 to November 1952 in so far as such testimony related to the investigation of possible antitrust law violations in the soap and synthetic detergent industry; and the Court having heard and considered arguments and briefs of counsel, and having rendered its opinion, filed April 17, 1956; and the plaintiff having filed a motion herein dated April 30, 1956, for reconsideration of this Court's ruling on defendants' motions to inspect the Grand Jury transcripts and for ruling on plaintiff's Claim of Privilege; and the Court having heard and considered arguments and briefs of counsel on plaintiff's said motion and Claim of Privilege, and having rendered its opinion, filed July 9, 1956,

Now, therefore, it is

ORDERED, that the motion and Claim of Privilege of plaintiff be and they hereby are denied; and it is further

ORDERED, that the motion of Procter be and it hereby is granted, and that plaintiff, within thirty (30) days from the entry of this order, produce at the offices of the Department of Justice, Washington, D. C., or such other place as the parties may agree, and permit Procter or its counsel to inspect and copy, by photostating or other means, all or any part of the transcripts of the testimony of all witnesses who appeared before the said Grand Jury sitting in Newark, New Jersey, from May 1951 through November 25, 1952, in connection with an investigation of possible violations of

*Order for disclosure of grand jury transcripts to
The Procter & Gamble Company.*

the antitrust laws of the United States in the soap and synthetic detergent industry.

Dated: July 23rd, 1956.

/s/ ALFRED E. MODARELLI,
U. S. D. J.

The form of the foregoing order is hereby
consented to:

/s/ JOSEPH E. McDOWELL
Trial Attorney, Department of Justice
TONER, CROWLEY, WOELPER & VANDERBILT

By /s/ MARSHALL CROWLEY
810 Broad Street, Newark, N. J.

/s/ RICHARD W. BARRETT per KCR
Richard W. Barrett

DINSMORE, SHOHL, SAWYER & DINSMORE

/s/ KENNETH C. ROYALL
Kenneth C. Royall

DWIGHT, ROYALL, HARRIS, KOEGEL & CASKEY
Attorneys for Defendant,
THE PROCTER & GAMBLE COMPANY

[Tab No. 104]

**Order for disclosure of grand jury transcripts to
Colgate-Palmolive Company.**

The defendant, Colgate-Palmolive Company (hereinafter called "Colgate"), having filed a motion herein on November 28, 1955, for an order granting leave to inspect and copy transcripts of the testimony of all witnesses before the grand jury of the United States District Court for the District of New Jersey, sitting in Newark, New Jersey, from May 1951 to November 1952 in so far as such testimony related to the investigation of possible antitrust law violations in the soap and synthetic detergent industry; and the Court having heard and considered arguments and briefs of counsel, and having rendered its opinion, filed April 17, 1956; and the plaintiff having filed a motion herein dated April 30, 1956, for reconsideration of this Court's ruling on defendants' motions to inspect the Grand Jury transcripts and for ruling on plaintiff's Claim of Privilege; and the Court having heard and considered arguments and briefs of counsel on plaintiff's said motion and Claim of Privilege, and having rendered its opinion, filed July 9, 1956,

Now, therefore, it is

ORDERED, that the motion and Claim of Privilege of plaintiff be and they hereby are denied; and it is further

ORDERED, that the motion of Colgate be and it hereby is granted, and that plaintiff, within thirty (30) days from the entry of this order, produce at the offices of the Department of Justice, Washington, D. C., or such other place as the parties may agree, and permit Colgate or its counsel to inspect and copy, by photostating or other means, all or any part of the transcripts of the testimony of all witnesses who appeared before the said Grand Jury sitting in Newark, New Jersey, from May 1951 through November 25, 1952, in connection with an investigation of possible viola-

*Order for disclosure of grand jury transcripts to
Colgate-Palmolive Company.*

tions of the antitrust laws of the United States in the soap and synthetic detergent industry.

Dated: July 23d, 1956.

/s/ ALFRED E. MODARELLI,
U. S. D. J.

The form of the foregoing order is
hereby consented to:

/s/ JOSEPH E. McDOWELL,
Trial Attorney, Department of Justice.

O'MARA, SCHUMANN, DAVIS & LYNCH,

By /s/ EDWARD J. O'MARA,
A member of said firm,
No. 1 Exchange Place,
Jersey City 2, New Jersey.

CAHILL, GORDON, REINDEL & OHL,

By /s/ MATHIAS F. CORREA,
A member of said firm,
63 Wall Street,
New York 5, New York,
Attorneys for Defendant,
Colgate-Palmolive Company.

[Tab No. 105]

Order for disclosure of grand jury transcripts to Lever Brothers Company.

The defendant, LEVER BROTHERS COMPANY (hereinafter called "Lever"), having filed a motion herein on November 28, 1955, for an order granting leave to inspect and copy transcripts of the testimony of all witnesses before the Grand Jury of the United States District Court for the District of New Jersey, sitting in Newark, New Jersey, from May 1951 to November 1952 insofar as such testimony related to the investigation of possible antitrust law violations in the soap and synthetic detergent industry; and the Court having heard and considered arguments and briefs of counsel, and having rendered its opinion, filed April 17, 1956; and the plaintiff having filed a motion herein dated April 30, 1956, for reconsideration of this Court's ruling on defendants' motions to inspect the Grand Jury transcripts and for ruling on plaintiff's Claim of Privilege; and the Court having heard and considered arguments and briefs of counsel on plaintiff's said motion and Claim of Privilege, and having rendered its opinion filed July 9, 1956,

Now, therefore, it is

ORDERED that the motion and Claim of Privilege of plaintiff be and they are hereby denied; and it is further

ORDERED that the motion of Lever be and it is hereby granted, and that plaintiff, within thirty (30) days from the entry of this order, produce at the offices of the Department of Justice, Washington, D. C., or such other place as the parties may agree, and permit Lever or its counsel to inspect and copy, by photostating or other means, all or any part of the transcripts of the testimony of all witnesses who appeared before the said Grand Jury sitting in Newark, New Jersey, from May 1951 through November 25, 1952, in connection with an investigation of possible violations of

*Order for disclosure of grand jury transcripts to
Lever Brothers Company.*

the antitrust laws of the United States in the soap and synthetic detergent industry.

Dated: July 23d, 1956.

/s/ ALFRED E. MODARELLI,
U. S. D. J.

The form of the foregoing order is hereby consented to:

/s/ JOSEPH E. McDOWELL, Attorney,
Department of Justice.

[Tab No. 107]

**Order for disclosure of grand jury transcripts to
The Association of American Soap and
Glycerine Producers, Inc.**

The defendant, The Association of American Soap and Glycerine Producers, Inc. (hereinafter called the association), having filed a motion herein on November 25, 1955, for an order granting leave to inspect and copy transcripts of the testimony of all witnesses before the Grand Jury of the United States District Court for the District of New Jersey, sitting in Newark, New Jersey, from May 1951 to November 1952 insofar as such testimony related to the investigation of possible antitrust law violations in the soap and synthetic detergent industry; and the Court having heard and considered arguments and briefs of counsel, and having rendered its opinion, filed April 17, 1956, and the plaintiff having filed a motion herein dated April 30, 1956, for reconsideration of this Court's ruling on defendant's motions to inspect the Grand Jury transcripts and for ruling on plaintiff's Claim of Privilege; and the Court having heard and considered arguments and briefs of counsel on plaintiff's said motion and Claim of Privilege, and having rendered its opinion filed July 9, 1956,

Now, therefore, it is

ORDERED, that the motion and Claim of Privilege of plaintiff be and they hereby are denied; and it is further

ORDERED, that the motion of the association be and it hereby is granted, and that plaintiff, within thirty (30) days from the entry of this order, produce at the offices of the Department of Justice, Washington, D. C., or such other place as the parties may agree, and permit the association or its counsel to inspect and copy, by photostating or other means, all or any parts of the transcripts of the testimony of all witnesses who appeared before the said Grand Jury sitting in Newark, New Jersey, from May 1951 through November 25, 1952, in connection with an investigation of

*Order for disclosure of grand jury transcripts to
The Association of American Soap and
Glycerine Producers, Inc.*

possible violations of the antitrust laws of the United States
in the soap and synthetic detergent industry.

Dated: July 23, 1956.

/s/ ALFRED E. MODARELLI,
U. S. D. J.

The form of the foregoing order is
hereby consented to:

/s/ JOSEPH E. McDOWELL,
Trial Attorney, Department of Justice.

McCARTER, ENGLISH & STUDER,

/s/ By AUGUSTUS C. STUDER, JR.,
11 Commerce Street,
Newark 2, New Jersey.

DAVIES, RICHBERG, TYDINGS & LANDA,

/s/ By ADRIEN F. BUSICK,
ADRIEN F. BUSICK

/s/ JAMES T. WELCH,
JAMES T. WELCH
1000 Vermont Avenue, N. W.,
Washington 5, D. C.

Attorneys for Defendant,
The Association of American Soap
& Glycerine Producers, Inc.

[Tab No. 106]

**Motion to amend or, alternatively, to stay Order
of July 24, 1956.**

Plaintiff moves the Court to enter an amended order, in the form attached hereto, in substitution for the orders entered in the above-entitled action on July 24, 1956 by the Honorable Alfred E. Modarelli, directing the plaintiff within 30 days to make available to the defendants the transcripts of testimony of all witnesses who appeared before a certain grand jury. Alternatively, plaintiff moves the Court to stay the said orders of July 24, 1956, pending the filing of appeals therefrom to the Supreme Court of the United States and/or the filing of an application with that Court for an extraordinary writ, and the final determination by that Court of said appeal and/or application. The reasons for the motion are set forth in the attached affidavit of Herbert Brownell, Jr., the Attorney General of the United States.

/s/ VICTOR R. HANSEN,
VICTOR R. HANSEN,
Assistant Attorney General

/s/ JOSEPH E. McDOWELL,
JOSEPH E. McDOWELL,
Attorney, Department of Justice

(Notice of motion dated August 15, 1956)

[Tab No. 109]

**Proposed form of order amending orders for disclosure
of grand jury transcripts attached to motion
to amend or stay.**

The Procter & Gamble Company, Colgate-Palmolive Company, Lever Brothers Company and the Associated Soap and Glycerine Producers, Inc., having filed motions herein on September 24, 1954, November 28, November 28, and November 25, 1955, respectively, for an order granting leave to inspect and copy transcripts of the testimony of all witnesses before the Grand Jury of the United States District Court for the District of New Jersey, sitting in Newark, New Jersey, from May 1951 to November 1952, insofar as such testimony related to the investigation of antitrust law violations in the soap and synthetic detergent industry; and the Court having heard and considered arguments and briefs of counsel, and having rendered its opinion filed April 17, 1956, holding that the defendants are entitled to inspect and copy said transcripts of the aforesaid testimony of witnesses before the Grand Jury; and the plaintiff having filed a motion herein dated April 30, 1956 for reconsideration of this Court's ruling on defendants' motions to inspect the Grand Jury transcripts and for a ruling on plaintiff's claim of privilege; and the Court having heard and considered arguments and briefs of counsel on plaintiff's said motions and claim of privilege, and having rendered its opinion, filed July 9, 1956,

Now, therefore, it is

ORDERED that the motion and claim of privilege of plaintiff be and they are hereby denied; and it is further

ORDERED that unless the plaintiff on or before August 24, 1956 produces at the office of the Department of Justice, Washington, D. C., or such other place as the parties may agree, and permits each of the defendants or their counsel to inspect and copy, by photostating or other means, all or any part of the aforesaid transcripts of the testimony

*Proposed form of order amending orders for disclosure
of grand jury transcripts attached to motion
to amend or stay.*

of witnesses who appeared before the said Grand Jury,
the Court will enter an order dismissing the complaint
herein.

/s/ ALFRED E. MODARELLI*
United States District Judge.

Dated: August 21, 1956.

* The Court signed and dated the proposed form of order
attached to the motion to amend or stay.

[Tab No, 109]

**Affidavit in support of motion to amend or stay
sworn to by Herbert Brownell, Jr.**

DISTRICT OF COLUMBIA, SS:

HERBERT BROWNELL, JR., being duly sworn, deposes and says:

I am the Attorney General of the United States and, as such, the chief law enforcement officer of the United States.

I am of the opinion that the order of the Court directing the plaintiff to make available to the defendants the grand jury transcripts is erroneous and that making such transcripts public would be contrary to the best interests of the administration of justice. It is my intention to seek review of that ruling in the Supreme Court of the United States.

The order of the Honorable Alfred E. Modarelli requires the Government to make the transcripts available to the defendants by August 24, 1956. In my considered judgment, it would be unseemly for the chief law enforcement officer of the United States to be placed in the dilemma either of having to comply with a court order which he considers erroneous and compliance with which he deems contrary to the public interest, or, alternatively, with being required to disobey the order, without first having an opportunity for effective appellate review of the order.

Under these circumstances, I believe that amendment of the orders as proposed in the within motion clearly would be in the public interest. However, if the Court concludes that such revision is not appropriate, I then urge that the orders be stayed until the United States has had an opportunity to file an appeal therefrom to the Supreme Court of the United States and/or to file with that Court

*Affidavit in support of motion to amend or stay
sworn to by Herbert Brownell, Jr.*

an application for an extraordinary writ, and until that
Court finally has determined said appeal and/or application.

/s/ HERBERT BROWNELL, JR.

HERBERT BROWNELL, JR.
Attorney General.

Sworn to before me this }
14th day of August, 1956. }

/s/ WM. C. JACKSON
My Commission
Expires 4/14/60

[Tab No. 109]

Brief in support of motion to amend or stay.

STATEMENT.

From May 1951 until November 25, 1952 a Grand Jury sitting in this district investigated possible violations of the antitrust laws in the soap and synthetic detergent industry. No indictment was returned, but on December 11, 1952 the United States filed a civil complaint charging that since 1926 the defendants have been engaged in a conspiracy in unreasonable restraint of, and to monopolize, trade and commerce in the production and sale of soap and synthetic detergents, and that the three manufacturing defendants have monopolized that trade, in violation of Sections 1 and 2 of the Sherman Act.

In the fall of 1955 each of the defendants filed a motion for an order granting leave to inspect and copy the transcript of testimony taken of all witnesses who appeared before the Grand Jury. That transcript is in the custody of the Attorney General. After argument, the District Court (*per* Judge Modarelli) held, in an opinion issued on April 17, 1956, that the defendants were entitled to inspect and copy the Grand Jury transcripts.

On May 3, 1956 the Government moved for reconsideration of that ruling. At the same time, it submitted a claim by the Attorney General that the Grand Jury transcripts ordered to be made available to the defendants were privileged against disclosure. On July 9, 1956 the Court issued an opinion denying the plaintiff's motion for reconsideration.

On July 24 the Court entered the order (dated July 23) which is the subject of the instant motion. That order directed the plaintiff to produce within 30 days at the offices of the Department of Justice, or at such other places as the parties may agree, and to permit each of the defendants or its counsel to inspect and copy, "all or any part of the transcripts of the testimony of all witnesses who appeared before the said Grand Jury * * *."

Brief in support of motion to amend or stay.

ARGUMENT.

Judge Modarelli's order requires the United States to make the Grand Jury transcripts available to the defendants by August 24, 1956. The Attorney General is of the view that that order is erroneous and further that making such transcripts public would be contrary to the public interest in the administration of justice (see his affidavit attached to motion). He has therefore decided to seek review of Judge Modarelli's ruling in the Supreme Court of the United States.

However, Supreme Court review obviously cannot be had by August 24, 1956, the date fixed for compliance in Judge Modarelli's order. We believe that it would be unseemly for the Attorney General, as the chief law enforcement officer of the United States, to be placed in the dilemma either of having to comply with a court order which he considers erroneous and compliance with which he deems contrary to the public interest, or, alternatively, with being required to disobey the order in order to obtain effective appellate review thereof. Under these circumstances, we urge the Court to enter an amended order which provides that if the transcripts are not made available by August 24 (the date previously fixed by the Court), an order will be entered dismissing the complaint. Such an amendment of the order of July 24 would in no way prejudice the defendants, and it would avoid placing the Attorney General of the United States in the dilemma above noted. If such an amended order is entered, the United States intends to appeal from the subsequent judgment of dismissal, as was done in *United States v. Cotton Valley Operators Committee*, 339 U. S. 94 (judgment of dismissal affirmed by an equally divided court).¹

¹ Cf. *United States v. Zucca*, 351 U. S. 91, where the district court entered an order dismissing the Government's complaint in a denaturalization proceeding for failure to file an affidavit of good

Brief in support of motion to amend or stay.

However, if the Court should conclude that the order should not be thus amended, we request the Court to stay the order pending the filing of an appeal therefrom to the Supreme Court of the United States and/or the filing with that Court of an application for an extraordinary writ, and final decision by the Supreme Court on such appeal and/or application. Such a stay would not prejudice the defendants, and would similarly avoid placing the Attorney General in the position of having to disobey an outstanding court order as a condition of testing its validity.

Respectfully submitted,

/s/ VICTOR R. HANSEN,
Assistant Attorney General

/s/ JOSEPH E. McDOWELL,

/s/ DANIEL M. FRIEDMAN,
Attorneys, Department of Justice.

cause, on condition that if within 60 days the Government filed such affidavit, the complaint would be reinstated. The Government did not file the affidavit, and the court then entered a final order of dismissal. Record on appeal, *United States v. Zucca*, No. 213, October Term 1955, pp. 20, 22.

[Tab No. 109]

52

**Answer to motion to amend or stay filed by
The Procter & Gamble Company.**

The defendant, The Procter & Gamble Company (hereinafter designated as "Procter"), answers plaintiff's motion of August 16, 1956, as follows:

As to the first request in plaintiff's instant motion, Procter says that the order herein dated July 23, 1956, is a proper and sufficient order at this stage of the proceedings. However, without waiving this position, Procter further states that the plaintiff's proposed relief of production or dismissal does not seem to be relief which Procter could in any way oppose.

This makes unnecessary a discussion of the alternative order proposed in plaintiff's motion, which alternative, if it had come before the Court for consideration, Procter would oppose.

Dated: August 21, 1956.

Respectfully submitted,

TONER, CROWLEY, WOELPER & VANDERBILT,

By /s/ JOHN A. ACKERMAN,
per H.A.L.

810 Broad Street,
Newark, New Jersey.

/s/ RICHARD W. BARRETT,
RICHARD W. BARRETT

DINSMORE, SHOHL, SAWYER & DINSMORE,
12th floor, Union Central Building,
Cincinnati 2, Ohio.

/s/ KENNETH C. ROYALL,
KENNETH C. ROYALL

DWIGHT, ROYALL, HARRIS, KOEGEL & CASKEY,
100 Broadway,
New York 5, N. Y.

Attorneys for Defendant,
The Procter & Gamble Company

[Tab No. 111]

**Transcript of Hearing Before the Honorable Alfred E.
Modarelli, U. S. D. J. on August 21, 1956.**

Appearances:

HERMAN SCOTT, U. S. Attorney, District of New Jersey,
By: GEORGE J. ROSSI, Assistant U. S. Attorney;

JOSEPH E. McDOWELL, and DANIEL M. FRIEDMAN,
Attorneys, Department of Justice, Attorneys for
the Plaintiff.

TONER, CROWLEY, WOELFER & VANDERBILT, Attorneys
for defendant Procter & Gamble Company, By:
JOHN A. ACKERMAN;

DWIGHT, ROYALL, HARRIS, KOEGEL & CASKEY, Of Counsel,
By: KENNETH C. ROYALL, FREDERICK W. R. PRIDE,
and H. ALLEN LOCHNER;

DINSMORE, SHOHL, SAWYER & DINSMORE, Of Counsel,
By: RICHARD W. BARRETT.

O'MARA, SCHUMANN, DAVIS & LYNCH, Attorneys for
defendant Colgate-Palmolive Peet Company;

(2) CAHILL, GORDON, REINDEL & OHL, Of Counsel. By:
MATHIAS F. CORREA.

BAILEY, SCHENCK & BENNETT, Attorneys for defendant
Lever Brothers Company, By: ALEXANDER T.
SCHENCK; ARNOLD, FORTAS & PORTER, Of Counsel,
By: ABE FORTAS.

MCCARTER, ENGLISH & STUDER, Attorneys for the Asso-
ciation;

DAVIES, RICHBERG, TYDINGS, BEEBE & LANDA, of Counsel,
By: JAMES T. WELCH.

Transcript of hearing before the Honorable Alfred E. Modarelli, U. S. D. J. on August 21, 1956.

The Court: No. 10, United States of America vs. Procter & Gamble, and others, hearing on plaintiff's motion to amend or stay the order of July 24, 1956, heretofore entered by this Court. Are we ready on that?

Mr. McDowell: The plaintiff is ready, your Honor.

Mr. Correa: The defendants are ready, your Honor.

Mr. Royall: Ready.

Mr. Rossi: I respectfully move the admission of Mr. Daniel Friedman, attorney for Department of Justice, Anti-trust Division. He is admitted to practice in New York State and before the United States Supreme Court.

The Court: I am very pleased to admit Mr. (3) Friedman for the purpose of this motion.

Mr. Friedman: Thank you, your Honor.

The Court: Go ahead, Mr. McDowell.

Mr. McDowell: Your Honor, our motion this morning seeks to put in proper posture for review on appeal your Honor's ruling with respect to the production of grand jury transcript for civil discovery purposes.

Because this matter does involve essentially this question of putting the matter in proper posture for appeal, I would like, with your Honor's indulgence, to ask Mr. Friedman, who is from the appellate section of the Department, to present the matter to the Court. I will, of course, be prepared to answer any questions your Honor may wish to address to me.

The Court: All right, Mr. Friedman, we will hear you from the appellate section.

Mr. Friedman: May it please your Honor, the order which your Honor entered in this matter on the 24th of July directed the United States to make available to the defendants within thirty days the grand jury transcripts. This order by its terms places the Attorney General in a very difficult dilemma, because he has a number of alternatives and we think that each of these alternatives would involve a serious violation of an important public interest

Transcript of hearing before the Honorable Alfred E. Modarelli, U. S. D. J. on August 21, 1956.

which the (4) Attorney General thinks he should carry out. And we are therefore coming before your Honor to suggest that the order be amended in a way to eliminate these possibilities. And, alternatively, if your Honor does not see fit to amend the order we are asking for a stay of the order pending the taking of necessary appellate review in the Supreme Court.

The amendment which we are proposing to your Honor is that instead of the order directing us within thirty days to make the grand jury transcripts available that the order recite that in the event the United States does not make the grand jury transcripts available within thirty days the Court will then enter an order of dismissal.

The Attorney General has a great deal of respect for the orders of this Court and he feels that it is not in the public interest that in order to test the validity of your Honor's ruling with reference to the production of the grand jury transcripts he should be put in the position that he has to disobey an outstanding order of the Court in order to seek review of that order.

If, on the one hand, he is to comply with your Honor's order and make the transcripts available, from the appellate point of view that would moot the matter, (5) because once the secrecy of the grand jury transcript has been breached the whole issue becomes moot. Moreover, it would require him to turn over the grand jury transcripts and thus dissipate and destroy the secrecy which he believes the public interest requires to be maintained.

On the other hand, if he does nothing and just remains until after the 30th day and does not comply, he is then put in the position that he stands before the bar of public opinion that he has disobeyed a valid and outstanding order of this Court which is within the Court's power to exercise.

We have already indicated that the Attorney General respectfully disagrees with your Honor's order and we think that he thinks that it is his obligation to test this

*Transcript of hearing before the Honorable Alfred E.
Modarelli, U. S. D. J. on August 21, 1956.*

order before the Supreme Court. But he does not think—and he very strongly is of this view—that the Executive Department of the Government in order to test the order of the Court should have to disobey it. We think that is an unseemly position. And we want to make it very clear that in requesting this amendment of the order we are not in any way waiving any rights to challenge the substance of the ruling on appeal. We are merely trying to change the form of the order, to put it in terms that we can get effective appellate review of the order without being in the position of (6) having to disobey the order as a condition to testing it.

We think there is no question but that this Court has the power to enter such an order. I don't seriously think it can be suggested that the Court could not amend the order in those terms.

Very briefly, in the event that your Honor declines to amend the order, we then suggest that the status quo should be preserved pending an appeal from the order, or, alternatively,—we haven't, frankly, decided which we are going to do, or both; it is a very difficult question—the filing of an application for an extraordinary writ. And we therefore ask if your Honor does not amend the order that he should stay the order until such time as we have had the application filed and the Supreme Court has disposed of it.

Now, I don't know, frankly, what objections, if any, our adversaries are going to make. And I respectfully suggest that we might hear from them and then we will be prepared to answer their objections.

The Court: Thank you, Mr. Friedman.

Mr. Friedman: Thank you, your Honor.

The Court: General Royall.

Mr. Royall: Your Honor, the defendant Procter & Gamble Company, The Procter & Gamble Company, which we (7) designate here as Procter, answers the argument made here today as follows:

Transcript of hearing before the Honorable Alfred E. Modarelli, U. S. D. J. on August 21, 1956.

As to the first request, primary request, in the plaintiff's motion, Procter says that the order herein dated July 23, 1956, is a proper and sufficient order at this stage of the proceedings.

However, without waiving this position Procter further states that the plaintiff's proposed relief of production or dismissal does not seem to be a relief which Procter could in any manner oppose.

This makes unnecessary a discussion of the alternate order proposed in the motion, which alternative, if it comes before the Court for consideration, Procter would oppose.

The Court: You understand, Mr. Friedman?

Mr. Friedman: Yes, I understand they are not objecting to the amended order.

Mr. Royall: We are not objecting to the relief, yes, your Honor.

The Court: Mr. Fortas.

Mr. Fortas: If your Honor please; our position is approximately the same, that is to say, we think the Government should have produced the documents. We don't believe that the Government is entitled to any special position in litigation. We understand that to (8) be the rule of law in this country. And the Government has come in here and moved for a dismissal of the case in the event that the documents are not produced and we don't see how we can object to that on behalf of the Lever Brothers Company.

Mr. Correa: That, if your Honor please, states substantially the position of the Colgate-Palmolive Company, which likewise wishes to insist upon production of the papers required by your Honor's order, in the manner specified in your Honor's order. But equally, as stated by Mr. Fortas, we do not see how we can oppose the Government's motion, as we understand it.

Mr. Welch: Your Honor, on behalf of the Association, I would like to adopt the views expressed by counsel for the respondents.

*Transcript of hearing before the Honorable Alfred E.
Modarelli, U. S. D. J. on August 21, 1956.*

The Court: Well, it looks like we are all in agreement. I certainly have no objection. You will submit an order in conformity with the opinions expressed by all counsel and I will sign it.

Mr. McDowell: Thank you, your Honor. I believe there is a draft of the order before the Court with our motion papers.

The Court: Have you gentlemen read the proposed order which Mr. McDowell has prepared?

Mr. Royall: Yes, sir; Procter did and I assume (9) the others did.

Mr. Correa: We have.

Mr. Royall: My statement was made on the basis of the order attached to the plaintiff's motion.

The Court: All right, gentlemen, the order will be signed since there is no objection to it.

Mr. Correa: May we have a moment, if your Honor please?

The Court: Yes, sir.

(Counsel confer.)

Mr. Correa: There is nothing of substance, if your Honor please, except that— Is it proposed that the order in exactly this form be signed? I think technically it is an amended order, isn't it?

The Court: Yes, I imagine it is an amended order. You mean the title of it?

Mr. Correa: Yes, sir.

The Court: You have no objection to putting "Amended Order" there, have you?

Mr. Friedman: Certainly not, your Honor.

The Court: All right. My secretary isn't here so you will have to have someone in the United States Attorney's office type it, or Mr. McDowell write it in, or someone else.

Mr. Royall: Your Honor, I read a statement and (10) we have it in the form of an answer which states our entire

*Transcript of hearing before the Honorable Alfred E.
Modarelli, U. S. D. J. on August 21, 1956.*

position. I would like to file it so it will be a matter of record and give a copy to the Government.

The Court: Does anybody else wish to file any?

Mr. Fortas: No, your Honor. On behalf of Lever, I would like to subscribe to the written statement filed by Procter.

Mr. Correa: And on behalf of Colgate I should like this record to stand as a record of our position on the Government's motion to amend its order.

Mr. Welch: That is also so for the Association.

The Court: That makes it unanimous.

Nothing further now and we will recess then to await the pleasure of the Naturalization Bureau when they are ready for the candidates for citizenship.

[Tab No. 119]

**Letter of the Honorable Alfred E. Modarelli,
U. S. D. J. to counsel.**

UNITED STATES DISTRICT COURT

DISTRICT OF NEW JERSEY

Newark 1, N. J.
September 6, 1956

HONORABLE HERMAN SCOTT
United States Attorney
Newark 1, New Jersey

HONORABLE JOSEPH E. McDOWELL
Antitrust Division
Department of Justice
Washington, D. C.

MESSRS. ARNOLD, FORTAS & PORTER
1229 Nineteenth Street, N.W.
Washington 6, D. C.

MESSRS. BAILEY, SCHENCK & BENNETT
744 Broad Street
Newark, New Jersey

MESSRS. CAHILL, GORDON, REINDEL & OHL
63 Wall Street
New York 5, New York

MESSRS. O'MARA, SCHUMANN, DAVIS & LYNCH
1 Exchange Place
Jersey City, New Jersey

MESSRS. DAVIES, RICHBERG, TYDINGS, BEEBE & LANDA
1000 Vermont Avenue, N.W.
Washington 5, D. C.

MESSRS. McCARTER, ENGLISH & STUDER
11 Commerce Street
Newark, New Jersey

*Letter of the Honorable Alfred E. Modarelli,
U. S. D. J. to counsel.*

MESSRS. DWIGHT, ROYALL, HARRIS, KOEGEL & CASKEY
100 Broadway
New York, New York

MESSRS. DINSMORE, SHOHL, SAWYER & DINSMORE
Union Central Building
Cincinnati, Ohio

MESSRS. TONER, CROWLEY, WOELPER & VANDERBILT
810 Broad Street
Newark, New Jersey

Re: *United States v. The Procter & Gamble Co.,
et al.* Civil No. 1196-52.

Gentlemen:

Reference is made to the amended order dated and filed in the above-entitled cause on August 21st last. The only purpose of this letter is to find out whether the plaintiff has produced as directed in the last paragraph of the amended order. Your early attention to this inquiry will be appreciated.

If the plaintiff has not produced, the court will enter an order dismissing the complaint as provided in the amended order.

Very truly yours,

ALFRED E. MODARELLI.

AEM:cmo

[Tab No. 128]

**Letter to the Honorable Alfred E. Modarelli, U. S. D. J.
from Victor R. Hansen, Assistant Attorney
General, Antitrust Division.**

September 7, 1956

Honorable ALFRED E. MODARELLI
United States District Judge
District of New Jersey
Newark 1, New Jersey.

*Re: United States v. The Procter & Gamble Company,
et al.—Civil Action No. 1196-52*

My dear Judge Modarelli:

I have Your Honor's letter addressed on September 6, 1956 to counsel in the above-entitled cause. In response to your inquiry I must respectfully state that plaintiff has not produced the grand jury transcripts for inspection by the defendants.

Sincerely yours,

/s/ VICTOR R. HANSEN

VICTOR R. HANSEN
Assistant Attorney General
Antitrust Division

[Tab No. 129]